

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Los Angeles to Pasadena Metro Blue Line Construction Authority for an order authorizing the construction of two light rail transit tracks at-grade crossing West Avenue 45 in the City and County of Los Angeles, California.

Application 00-10-012

And Related Matters.

Application 01-06-011
Application 00-11-050
Application 00-11-040
Application 00-11-034
Application 00-11-033
Application 00-11-032
Application 00-11-029
Application 00-11-016
Application 00-11-015
Application 00-10-050
Application 00-10-039
Application 00-10-033
Application 00-10-020

**ASSIGNED COMMISSIONER'S RULING
GRANTING AUTHORITY TO CONSTRUCT GRADE CROSSINGS
AT APPLICANT'S RISK**

The Los Angeles to Pasadena Metro Blue Line Construction Authority (Applicant) is constructing a light rail line from Union Station in Los Angeles to Pasadena. In furtherance of this project it will be necessary to cross several streets along the proposed path of the train. Authority for these crossings is the subject of the consolidated applications in this proceeding.

There have been several protests filed to some or all of the proposed crossings and the matters will be the subject of evidentiary hearings beginning November 5, 2001. Applicant filed a motion seeking authority to construct the line pending final decision. Applicant states that if this motion is not granted it will be subject to increased costs of up to 14 million dollars, due to disruption in the contractor's schedule of construction. Applicant stated that it was willing to have the requested ruling include conditions that would preclude it from relying on expenditures arising from this continued construction as support for granting the applications and that the Commission would not be expected to given any consideration to any such expenditure.

A response in opposition to the motion was filed by NOBLAG, Protestant to Application 00-11-040. NOBLAG argues that granting the motion would permit expenditure of public funds before review of the project. It would also require the Commission to inferentially say that there was adequate environmental information for us to allow the project to proceed. NOBLAG states that the time constraint that Applicant alleges is of its own making, in that it could have filed applications to this Commission at an earlier date. On this point I note that all but one of the consolidated applications were filed in the year 2000.

The Commission's Railroad Crossing Engineering Section (Staff) filed a "Partial Opposition." It is willing to withdraw its opposition, as well as its protests to the various applications if Applicant will agree to the various crossing protection recommendations made by Staff in its testimony. This includes changing the Pasadena Avenue crossings to separations, rather than at-grade crossings. As with NOBLAG, Staff indicates that granting this motion could set a dangerous precedent and only if stated conditions are fully met, as they have

been in this case, would Staff agree to such a procedure. I have not yet been informed about any reaction by Applicant.

Applicant is expending public money and will continue to do so whether or not we grant its motion. Apparently Applicant is willing to assume the risk that grant of their motion will actually save public funds. I caution Applicant that this IS a risk, and in granting this motion in no way do I mean to afford any assurance to Applicant that it will be successful before this Commissioner or the Commission. Whether the crossings as planned are appropriate is an open question. Whether the environmental documents are adequate for us to make the necessary findings required of a responsible agency is a matter to be considered at the evidentiary hearings. Whether Applicant is compounding its problems by filing this motion is a matter for Applicant to assess.

If Applicant truly desires to go forward as it requests, knowing full well that one or more of its proposed at-grade crossings may be denied, I will not stand in its way. I do believe that this relief should be stringently conditioned so as not to prejudice the positions of Protestants. In granting this ruling I do not intend to provide any advantage to Applicant in the case in chief. Applicant has the full burden of proof.

Should Applicant accept this Ruling and proceed with construction as contemplated in its motion there would be no need for issuance of a partial deconsolidation order as contemplated in my Scoping Memo of September 28, 2001. Therefore I shall require Applicant to give notice of its intention with regard to this ruling within 15 days.

IT IS RULED that:

1. Applicant may construct its light rail line in accordance with the Applications consolidated in this proceeding.

2. In accepting this Ruling Applicant agrees not to argue or allude to any costs of remedial work attributable to construction performed under authority of this Ruling in any brief, pleading, oral argument, or *ex parte* meeting with the Commission, any Commissioners, or employee of the Commission.

3. Applicant accepts this authority with full knowledge that one or more of the Protestants may be successful in the final Commission decision. Should this occur Applicant acknowledges it will be required to undo any construction contrary to the Commission decision. Cost of this remedial action may well exceed the cost Applicant now claims is at risk if it is not permitted to continue construction.

4. Applicant shall give notice of its intentions with regard to this Ruling within 15 days of the date of the Ruling. All parties shall be served with this notice by Applicant.

Dated November 1, 2001, at San Francisco, California.

/s/ RICHARD A. BILAS

Richard A. Bilas
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Granting Authority to Construct Grade Crossings at Applicant's Risk on all parties of record in this proceeding or their attorneys of record.

Dated November 1, 2001, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

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